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HOUSE BILL 2325

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State of Washington

61st Legislature

2009 Regular Session

By Representative Ericks

1 AN ACT Relating to community custody; amending RCW 9.94A.701,  
2 9.94A.707, and 9.94A.850; reenacting and amending RCW 9.94A.030 and  
3 9.94A.715; and providing an effective date.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

5 **Sec. 1.** RCW 9.94A.030 and 2008 c 276 s 309, 2008 c 231 s 23, 2008  
6 c 230 s 2, and 2008 c 7 s 1 are each reenacted and amended to read as  
7 follows:

8 Unless the context clearly requires otherwise, the definitions in  
9 this section apply throughout this chapter.

10 (1) "Board" means the indeterminate sentence review board created  
11 under chapter 9.95 RCW.

12 (2) "Collect," or any derivative thereof, "collect and remit," or  
13 "collect and deliver," when used with reference to the department,  
14 means that the department, either directly or through a collection  
15 agreement authorized by RCW 9.94A.760, is responsible for monitoring  
16 and enforcing the offender's sentence with regard to the legal  
17 financial obligation, receiving payment thereof from the offender, and,  
18 consistent with current law, delivering daily the entire payment to the  
19 superior court clerk without depositing it in a departmental account.

1 (3) "Commission" means the sentencing guidelines commission.

2 (4) "Community corrections officer" means an employee of the  
3 department who is responsible for carrying out specific duties in  
4 supervision of sentenced offenders and monitoring of sentence  
5 conditions.

6 (5) "Community custody" means:

7 (a) That portion of an offender's sentence of confinement in lieu  
8 of earned release time or imposed as part of a sentence and served in  
9 the community subject to controls placed on the offender's movement and  
10 activities by the department(~~(-~~

11 ~~(6) "Community custody range" means))~~; or

12 (b) The ~~((minimum and maximum))~~ period of community custody  
13 included as part of a sentence under RCW 9.94A.715, as established by  
14 the commission or the legislature under RCW 9.94A.850.

15 ~~((+7))~~ (6) "Community protection zone" means the area within eight  
16 hundred eighty feet of the facilities and grounds of a public or  
17 private school.

18 ~~((+8))~~ (7) "Community restitution" means compulsory service,  
19 without compensation, performed for the benefit of the community by the  
20 offender.

21 ~~((+9))~~ (8) "Confinement" means total or partial confinement.

22 ~~((+10))~~ (9) "Conviction" means an adjudication of guilt pursuant  
23 to Title~~((s))~~ 10 or 13 RCW and includes a verdict of guilty, a finding  
24 of guilty, and acceptance of a plea of guilty.

25 ~~((+11))~~ (10) "Crime-related prohibition" means an order of a court  
26 prohibiting conduct that directly relates to the circumstances of the  
27 crime for which the offender has been convicted, and shall not be  
28 construed to mean orders directing an offender affirmatively to  
29 participate in rehabilitative programs or to otherwise perform  
30 affirmative conduct. However, affirmative acts necessary to monitor  
31 compliance with the order of a court may be required by the department.

32 ~~((+12))~~ (11) "Criminal history" means the list of a defendant's  
33 prior convictions and juvenile adjudications, whether in this state, in  
34 federal court, or elsewhere.

35 (a) The history shall include, where known, for each conviction (i)  
36 whether the defendant has been placed on probation and the length and  
37 terms thereof; and (ii) whether the defendant has been incarcerated and  
38 the length of incarceration.

1 (b) A conviction may be removed from a defendant's criminal history  
2 only if it is vacated pursuant to RCW 9.96.060, 9.94A.640, 9.95.240, or  
3 a similar out-of-state statute, or if the conviction has been vacated  
4 pursuant to a governor's pardon.

5 (c) The determination of a defendant's criminal history is distinct  
6 from the determination of an offender score. A prior conviction that  
7 was not included in an offender score calculated pursuant to a former  
8 version of the sentencing reform act remains part of the defendant's  
9 criminal history.

10 ~~((13))~~ (12) "Criminal street gang" means any ongoing  
11 organization, association, or group of three or more persons, whether  
12 formal or informal, having a common name or common identifying sign or  
13 symbol, having as one of its primary activities the commission of  
14 criminal acts, and whose members or associates individually or  
15 collectively engage in or have engaged in a pattern of criminal street  
16 gang activity. This definition does not apply to employees engaged in  
17 concerted activities for their mutual aid and protection, or to the  
18 activities of labor and bona fide nonprofit organizations or their  
19 members or agents.

20 ~~((14))~~ (13) "Criminal street gang associate or member" means any  
21 person who actively participates in any criminal street gang and who  
22 intentionally promotes, furthers, or assists in any criminal act by the  
23 criminal street gang.

24 ~~((15))~~ (14) "Criminal street gang-related offense" means any  
25 felony or misdemeanor offense, whether in this state or elsewhere, that  
26 is committed for the benefit of, at the direction of, or in association  
27 with any criminal street gang, or is committed with the intent to  
28 promote, further, or assist in any criminal conduct by the gang, or is  
29 committed for one or more of the following reasons:

30 (a) To gain admission, prestige, or promotion within the gang;

31 (b) To increase or maintain the gang's size, membership, prestige,  
32 dominance, or control in any geographical area;

33 (c) To exact revenge or retribution for the gang or any member of  
34 the gang;

35 (d) To obstruct justice, or intimidate or eliminate any witness  
36 against the gang or any member of the gang;

37 (e) To directly or indirectly cause any benefit, aggrandizement,

1 gain, profit, or other advantage for the gang, its reputation,  
2 influence, or membership; or

3 (f) To provide the gang with any advantage in, or any control or  
4 dominance over any criminal market sector, including, but not limited  
5 to, manufacturing, delivering, or selling any controlled substance  
6 (chapter 69.50 RCW); arson (chapter 9A.48 RCW); trafficking in stolen  
7 property (chapter 9A.82 RCW); promoting prostitution (chapter 9A.88  
8 RCW); human trafficking (RCW 9A.40.100); or promoting pornography  
9 (chapter 9.68 RCW).

10 ~~((+16+))~~ (15) "Day fine" means a fine imposed by the sentencing  
11 court that equals the difference between the offender's net daily  
12 income and the reasonable obligations that the offender has for the  
13 support of the offender and any dependents.

14 ~~((+17+))~~ (16) "Day reporting" means a program of enhanced  
15 supervision designed to monitor the offender's daily activities and  
16 compliance with sentence conditions, and in which the offender is  
17 required to report daily to a specific location designated by the  
18 department or the sentencing court.

19 ~~((+18+))~~ (17) "Department" means the department of corrections.

20 ~~((+19+))~~ (18) "Determinate sentence" means a sentence that states  
21 with exactitude the number of actual years, months, or days of total  
22 confinement, of partial confinement, of community custody, the number  
23 of actual hours or days of community restitution work, or dollars or  
24 terms of a legal financial obligation. The fact that an offender  
25 through earned release can reduce the actual period of confinement  
26 shall not affect the classification of the sentence as a determinate  
27 sentence.

28 ~~((+20+))~~ (19) "Disposable earnings" means that part of the earnings  
29 of an offender remaining after the deduction from those earnings of any  
30 amount required by law to be withheld. For the purposes of this  
31 definition, "earnings" means compensation paid or payable for personal  
32 services, whether denominated as wages, salary, commission, bonuses, or  
33 otherwise, and, notwithstanding any other provision of law making the  
34 payments exempt from garnishment, attachment, or other process to  
35 satisfy a court-ordered legal financial obligation, specifically  
36 includes periodic payments pursuant to pension or retirement programs,  
37 or insurance policies of any type, but does not include payments made

1 under Title 50 RCW, except as provided in RCW 50.40.020 and 50.40.050,  
2 or Title 74 RCW.

3 ~~((+21+))~~ (20) "Drug offender sentencing alternative" is a  
4 sentencing option available to persons convicted of a felony offense  
5 other than a violent offense or a sex offense and who are eligible for  
6 the option under RCW 9.94A.660.

7 ~~((+22+))~~ (21) "Drug offense" means:

8 (a) Any felony violation of chapter 69.50 RCW except possession of  
9 a controlled substance (RCW 69.50.4013) or forged prescription for a  
10 controlled substance (RCW 69.50.403);

11 (b) Any offense defined as a felony under federal law that relates  
12 to the possession, manufacture, distribution, or transportation of a  
13 controlled substance; or

14 (c) Any out-of-state conviction for an offense that under the laws  
15 of this state would be a felony classified as a drug offense under (a)  
16 of this subsection.

17 ~~((+23+))~~ (22) "Earned release" means earned release from  
18 confinement as provided in RCW 9.94A.728.

19 ~~((+24+))~~ (23) "Escape" means:

20 (a) Sexually violent predator escape (RCW 9A.76.115), escape in the  
21 first degree (RCW 9A.76.110), escape in the second degree (RCW  
22 9A.76.120), willful failure to return from furlough (RCW 72.66.060),  
23 willful failure to return from work release (RCW 72.65.070), or willful  
24 failure to be available for supervision by the department while in  
25 community custody (RCW 72.09.310); or

26 (b) Any federal or out-of-state conviction for an offense that  
27 under the laws of this state would be a felony classified as an escape  
28 under (a) of this subsection.

29 ~~((+25+))~~ (24) "Felony traffic offense" means:

30 (a) Vehicular homicide (RCW 46.61.520), vehicular assault (RCW  
31 46.61.522), eluding a police officer (RCW 46.61.024), felony hit-and-  
32 run injury-accident (RCW 46.52.020(4)), felony driving while under the  
33 influence of intoxicating liquor or any drug (RCW 46.61.502(6)), or  
34 felony physical control of a vehicle while under the influence of  
35 intoxicating liquor or any drug (RCW 46.61.504(6)); or

36 (b) Any federal or out-of-state conviction for an offense that  
37 under the laws of this state would be a felony classified as a felony  
38 traffic offense under (a) of this subsection.

1           (~~(+26)~~) (25) "Fine" means a specific sum of money ordered by the  
2 sentencing court to be paid by the offender to the court over a  
3 specific period of time.

4           (~~(+27)~~) (26) "First-time offender" means any person who has no  
5 prior convictions for a felony and is eligible for the first-time  
6 offender waiver under RCW 9.94A.650.

7           (~~(+28)~~) (27) "Home detention" means a program of partial  
8 confinement available to offenders wherein the offender is confined in  
9 a private residence subject to electronic surveillance.

10           (~~(+29)~~) (28) "Legal financial obligation" means a sum of money  
11 that is ordered by a superior court of the state of Washington for  
12 legal financial obligations which may include restitution to the  
13 victim, statutorily imposed crime victims' compensation fees as  
14 assessed pursuant to RCW 7.68.035, court costs, county or interlocal  
15 drug funds, court-appointed attorneys' fees, and costs of defense,  
16 fines, and any other financial obligation that is assessed to the  
17 offender as a result of a felony conviction. Upon conviction for  
18 vehicular assault while under the influence of intoxicating liquor or  
19 any drug, RCW 46.61.522(1)(b), or vehicular homicide while under the  
20 influence of intoxicating liquor or any drug, RCW 46.61.520(1)(a),  
21 legal financial obligations may also include payment to a public agency  
22 of the expense of an emergency response to the incident resulting in  
23 the conviction, subject to RCW 38.52.430.

24           (~~(+30)~~) (29) "Most serious offense" means any of the following  
25 felonies or a felony attempt to commit any of the following felonies:

26           (a) Any felony defined under any law as a class A felony or  
27 criminal solicitation of or criminal conspiracy to commit a class A  
28 felony;

29           (b) Assault in the second degree;

30           (c) Assault of a child in the second degree;

31           (d) Child molestation in the second degree;

32           (e) Controlled substance homicide;

33           (f) Extortion in the first degree;

34           (g) Incest when committed against a child under age fourteen;

35           (h) Indecent liberties;

36           (i) Kidnapping in the second degree;

37           (j) Leading organized crime;

38           (k) Manslaughter in the first degree;

1 (l) Manslaughter in the second degree;  
2 (m) Promoting prostitution in the first degree;  
3 (n) Rape in the third degree;  
4 (o) Robbery in the second degree;  
5 (p) Sexual exploitation;  
6 (q) Vehicular assault, when caused by the operation or driving of  
7 a vehicle by a person while under the influence of intoxicating liquor  
8 or any drug or by the operation or driving of a vehicle in a reckless  
9 manner;  
10 (r) Vehicular homicide, when proximately caused by the driving of  
11 any vehicle by any person while under the influence of intoxicating  
12 liquor or any drug as defined by RCW 46.61.502, or by the operation of  
13 any vehicle in a reckless manner;  
14 (s) Any other class B felony offense with a finding of sexual  
15 motivation;  
16 (t) Any other felony with a deadly weapon verdict under RCW  
17 9.94A.602;  
18 (u) Any felony offense in effect at any time prior to December 2,  
19 1993, that is comparable to a most serious offense under this  
20 subsection, or any federal or out-of-state conviction for an offense  
21 that under the laws of this state would be a felony classified as a  
22 most serious offense under this subsection;  
23 (v)(i) A prior conviction for indecent liberties under RCW  
24 9A.88.100(1) (a), (b), and (c), chapter 260, Laws of 1975 1st ex. sess.  
25 as it existed until July 1, 1979, RCW 9A.44.100(1) (a), (b), and (c) as  
26 it existed from July 1, 1979, until June 11, 1986, and RCW 9A.44.100(1)  
27 (a), (b), and (d) as it existed from June 11, 1986, until July 1, 1988;  
28 (ii) A prior conviction for indecent liberties under RCW  
29 9A.44.100(1)(c) as it existed from June 11, 1986, until July 1, 1988,  
30 if: (A) The crime was committed against a child under the age of  
31 fourteen; or (B) the relationship between the victim and perpetrator is  
32 included in the definition of indecent liberties under RCW  
33 9A.44.100(1)(c) as it existed from July 1, 1988, through July 27, 1997,  
34 or RCW 9A.44.100(1) (d) or (e) as it existed from July 25, 1993,  
35 through July 27, 1997;  
36 (w) Any out-of-state conviction for a felony offense with a finding  
37 of sexual motivation if the minimum sentence imposed was ten years or  
38 more; provided that the out-of-state felony offense must be comparable

1 to a felony offense under Title 9 or 9A RCW and the out-of-state  
2 definition of sexual motivation must be comparable to the definition of  
3 sexual motivation contained in this section.

4 ~~((+31+))~~ (30) "Nonviolent offense" means an offense which is not a  
5 violent offense.

6 ~~((+32+))~~ (31) "Offender" means a person who has committed a felony  
7 established by state law and is eighteen years of age or older or is  
8 less than eighteen years of age but whose case is under superior court  
9 jurisdiction under RCW 13.04.030 or has been transferred by the  
10 appropriate juvenile court to a criminal court pursuant to RCW  
11 13.40.110. Throughout this chapter, the terms "offender" and  
12 "defendant" are used interchangeably.

13 ~~((+33+))~~ (32) "Partial confinement" means confinement for no more  
14 than one year in a facility or institution operated or utilized under  
15 contract by the state or any other unit of government, or, if home  
16 detention or work crew has been ordered by the court, in an approved  
17 residence, for a substantial portion of each day with the balance of  
18 the day spent in the community. Partial confinement includes work  
19 release, home detention, work crew, and a combination of work crew and  
20 home detention.

21 ~~((+34+))~~ (33) "Pattern of criminal street gang activity" means:

22 (a) The commission, attempt, conspiracy, or solicitation of, or any  
23 prior juvenile adjudication of or adult conviction of, two or more of  
24 the following criminal street gang-related offenses:

25 (i) Any "serious violent" felony offense as defined in RCW  
26 9.94A.030, excluding Homicide by Abuse (RCW 9A.32.055) and Assault of  
27 a Child 1 (RCW 9A.36.120);

28 (ii) Any "violent" offense as defined by RCW 9.94A.030, excluding  
29 Assault of a Child 2 (RCW 9A.36.130);

30 (iii) Deliver or Possession with Intent to Deliver a Controlled  
31 Substance (chapter 69.50 RCW);

32 (iv) Any violation of the firearms and dangerous weapon act  
33 (chapter 9.41 RCW);

34 (v) Theft of a Firearm (RCW 9A.56.300);

35 (vi) Possession of a Stolen Firearm (RCW 9A.56.310);

36 (vii) Malicious Harassment (RCW 9A.36.080);

37 (viii) Harassment where a subsequent violation or deadly threat is  
38 made (RCW 9A.46.020(2)(b));



1 (ix) Criminal Gang Intimidation (RCW 9A.46.120);  
2 (x) Any felony conviction by a person eighteen years of age or  
3 older with a special finding of involving a juvenile in a felony  
4 offense under RCW 9.94A.833;  
5 (xi) Residential Burglary (RCW 9A.52.025);  
6 (xii) Burglary 2 (RCW 9A.52.030);  
7 (xiii) Malicious Mischief 1 (RCW 9A.48.070);  
8 (xiv) Malicious Mischief 2 (RCW 9A.48.080);  
9 (xv) Theft of a Motor Vehicle (RCW 9A.56.065);  
10 (xvi) Possession of a Stolen Motor Vehicle (RCW 9A.56.068);  
11 (xvii) Taking a Motor Vehicle Without Permission 1 (RCW 9A.56.070);  
12 (xviii) Taking a Motor Vehicle Without Permission 2 (RCW  
13 9A.56.075);  
14 (xix) Extortion 1 (RCW 9A.56.120);  
15 (xx) Extortion 2 (RCW 9A.56.130);  
16 (xxi) Intimidating a Witness (RCW 9A.72.110);  
17 (xxii) Tampering with a Witness (RCW 9A.72.120);  
18 (xxiii) Reckless Endangerment (RCW 9A.36.050);  
19 (xxiv) Coercion (RCW 9A.36.070);  
20 (xxv) Harassment (RCW 9A.46.020); or  
21 (xxvi) Malicious Mischief 3 (RCW 9A.48.090);  
22 (b) That at least one of the offenses listed in (a) of this  
23 subsection shall have occurred after July 1, 2008;  
24 (c) That the most recent committed offense listed in (a) of this  
25 subsection occurred within three years of a prior offense listed in (a)  
26 of this subsection; and  
27 (d) Of the offenses that were committed in (a) of this subsection,  
28 the offenses occurred on separate occasions or were committed by two or  
29 more persons.  
30 (~~(+35+)~~) (34) "Persistent offender" is an offender who:  
31 (a)(i) Has been convicted in this state of any felony considered a  
32 most serious offense; and  
33 (ii) Has, before the commission of the offense under (a) of this  
34 subsection, been convicted as an offender on at least two separate  
35 occasions, whether in this state or elsewhere, of felonies that under  
36 the laws of this state would be considered most serious offenses and  
37 would be included in the offender score under RCW 9.94A.525; provided

1 that of the two or more previous convictions, at least one conviction  
2 must have occurred before the commission of any of the other most  
3 serious offenses for which the offender was previously convicted; or

4 (b)(i) Has been convicted of: (A) Rape in the first degree, rape  
5 of a child in the first degree, child molestation in the first degree,  
6 rape in the second degree, rape of a child in the second degree, or  
7 indecent liberties by forcible compulsion; (B) any of the following  
8 offenses with a finding of sexual motivation: Murder in the first  
9 degree, murder in the second degree, homicide by abuse, kidnapping in  
10 the first degree, kidnapping in the second degree, assault in the first  
11 degree, assault in the second degree, assault of a child in the first  
12 degree, assault of a child in the second degree, or burglary in the  
13 first degree; or (C) an attempt to commit any crime listed in this  
14 subsection (~~(+35+)~~) (34)(b)(i); and

15 (ii) Has, before the commission of the offense under (b)(i) of this  
16 subsection, been convicted as an offender on at least one occasion,  
17 whether in this state or elsewhere, of an offense listed in (b)(i) of  
18 this subsection or any federal or out-of-state offense or offense under  
19 prior Washington law that is comparable to the offenses listed in  
20 (b)(i) of this subsection. A conviction for rape of a child in the  
21 first degree constitutes a conviction under (b)(i) of this subsection  
22 only when the offender was sixteen years of age or older when the  
23 offender committed the offense. A conviction for rape of a child in  
24 the second degree constitutes a conviction under (b)(i) of this  
25 subsection only when the offender was eighteen years of age or older  
26 when the offender committed the offense.

27 (~~(+36+)~~) (35) "Predatory" means: (a) The perpetrator of the crime  
28 was a stranger to the victim, as defined in this section; (b) the  
29 perpetrator established or promoted a relationship with the victim  
30 prior to the offense and the victimization of the victim was a  
31 significant reason the perpetrator established or promoted the  
32 relationship; or (c) the perpetrator was: (i) A teacher, counselor,  
33 volunteer, or other person in authority in any public or private school  
34 and the victim was a student of the school under his or her authority  
35 or supervision. For purposes of this subsection, "school" does not  
36 include home-based instruction as defined in RCW 28A.225.010; (ii) a  
37 coach, trainer, volunteer, or other person in authority in any  
38 recreational activity and the victim was a participant in the activity

1 under his or her authority or supervision; or (iii) a pastor, elder,  
2 volunteer, or other person in authority in any church or religious  
3 organization, and the victim was a member or participant of the  
4 organization under his or her authority.

5 ~~((+37+))~~ (36) "Private school" means a school regulated under  
6 chapter 28A.195 or 28A.205 RCW.

7 ~~((+38+))~~ (37) "Public school" has the same meaning as in RCW  
8 28A.150.010.

9 ~~((+39+))~~ (38) "Restitution" means a specific sum of money ordered  
10 by the sentencing court to be paid by the offender to the court over a  
11 specified period of time as payment of damages. The sum may include  
12 both public and private costs.

13 ~~((+40+))~~ (39) "Risk assessment" means the application of an  
14 objective instrument supported by research and adopted by the  
15 department for the purpose of assessing an offender's risk of  
16 reoffense, taking into consideration the nature of the harm done by the  
17 offender, place and circumstances of the offender related to risk, the  
18 offender's relationship to any victim, and any information provided to  
19 the department by victims. The results of a risk assessment shall not  
20 be based on unconfirmed or unconfirmable allegations.

21 ~~((+41+))~~ (40) "Serious traffic offense" means:

22 (a) Nonfelony driving while under the influence of intoxicating  
23 liquor or any drug (RCW 46.61.502), nonfelony actual physical control  
24 while under the influence of intoxicating liquor or any drug (RCW  
25 46.61.504), reckless driving (RCW 46.61.500), or hit-and-run an  
26 attended vehicle (RCW 46.52.020(5)); or

27 (b) Any federal, out-of-state, county, or municipal conviction for  
28 an offense that under the laws of this state would be classified as a  
29 serious traffic offense under (a) of this subsection.

30 ~~((+42+))~~ (41) "Serious violent offense" is a subcategory of violent  
31 offense and means:

- 32 (a)(i) Murder in the first degree;
- 33 (ii) Homicide by abuse;
- 34 (iii) Murder in the second degree;
- 35 (iv) Manslaughter in the first degree;
- 36 (v) Assault in the first degree;
- 37 (vi) Kidnapping in the first degree;
- 38 (vii) Rape in the first degree;

1 (viii) Assault of a child in the first degree; or  
2 (ix) An attempt, criminal solicitation, or criminal conspiracy to  
3 commit one of these felonies; or  
4 (b) Any federal or out-of-state conviction for an offense that  
5 under the laws of this state would be a felony classified as a serious  
6 violent offense under (a) of this subsection.  
7 ~~((43))~~ (42) "Sex offense" means:  
8 (a)(i) A felony that is a violation of chapter 9A.44 RCW other than  
9 RCW 9A.44.130(12);  
10 (ii) A violation of RCW 9A.64.020;  
11 (iii) A felony that is a violation of chapter 9.68A RCW other than  
12 RCW 9.68A.080; or  
13 (iv) A felony that is, under chapter 9A.28 RCW, a criminal attempt,  
14 criminal solicitation, or criminal conspiracy to commit such crimes;  
15 (b) Any conviction for a felony offense in effect at any time prior  
16 to July 1, 1976, that is comparable to a felony classified as a sex  
17 offense in (a) of this subsection;  
18 (c) A felony with a finding of sexual motivation under RCW  
19 9.94A.835 or 13.40.135; or  
20 (d) Any federal or out-of-state conviction for an offense that  
21 under the laws of this state would be a felony classified as a sex  
22 offense under (a) of this subsection.  
23 ~~((44))~~ (43) "Sexual motivation" means that one of the purposes  
24 for which the defendant committed the crime was for the purpose of his  
25 or her sexual gratification.  
26 ~~((45))~~ (44) "Standard sentence range" means the sentencing  
27 court's discretionary range in imposing a nonappealable sentence.  
28 ~~((46))~~ (45) "Statutory maximum sentence" means the maximum length  
29 of time for which an offender may be confined as punishment for a crime  
30 as prescribed in chapter 9A.20 RCW, RCW 9.92.010, the statute defining  
31 the crime, or other statute defining the maximum penalty for a crime.  
32 ~~((47))~~ (46) "Stranger" means that the victim did not know the  
33 offender twenty-four hours before the offense.  
34 ~~((48))~~ (47) "Total confinement" means confinement inside the  
35 physical boundaries of a facility or institution operated or utilized  
36 under contract by the state or any other unit of government for twenty-  
37 four hours a day, or pursuant to RCW 72.64.050 and 72.64.060.

1       (~~(49)~~) (48) "Transition training" means written and verbal  
2 instructions and assistance provided by the department to the offender  
3 during the two weeks prior to the offender's successful completion of  
4 the work ethic camp program. The transition training shall include  
5 instructions in the offender's requirements and obligations during the  
6 offender's period of community custody.

7       (~~(50)~~) (49) "Victim" means any person who has sustained  
8 emotional, psychological, physical, or financial injury to person or  
9 property as a direct result of the crime charged.

10       (~~(51)~~) (50) "Violent offense" means:

11       (a) Any of the following felonies:

12       (i) Any felony defined under any law as a class A felony or an  
13 attempt to commit a class A felony;

14       (ii) Criminal solicitation of or criminal conspiracy to commit a  
15 class A felony;

16       (iii) Manslaughter in the first degree;

17       (iv) Manslaughter in the second degree;

18       (v) Indecent liberties if committed by forcible compulsion;

19       (vi) Kidnapping in the second degree;

20       (vii) Arson in the second degree;

21       (viii) Assault in the second degree;

22       (ix) Assault of a child in the second degree;

23       (x) Extortion in the first degree;

24       (xi) Robbery in the second degree;

25       (xii) Drive-by shooting;

26       (xiii) Vehicular assault, when caused by the operation or driving  
27 of a vehicle by a person while under the influence of intoxicating  
28 liquor or any drug or by the operation or driving of a vehicle in a  
29 reckless manner; and

30       (xiv) Vehicular homicide, when proximately caused by the driving of  
31 any vehicle by any person while under the influence of intoxicating  
32 liquor or any drug as defined by RCW 46.61.502, or by the operation of  
33 any vehicle in a reckless manner;

34       (b) Any conviction for a felony offense in effect at any time prior  
35 to July 1, 1976, that is comparable to a felony classified as a violent  
36 offense in (a) of this subsection; and

37       (c) Any federal or out-of-state conviction for an offense that

1 under the laws of this state would be a felony classified as a violent  
2 offense under (a) or (b) of this subsection.

3 ~~((+52+))~~ (51) "Work crew" means a program of partial confinement  
4 consisting of civic improvement tasks for the benefit of the community  
5 that complies with RCW 9.94A.725.

6 ~~((+53+))~~ (52) "Work ethic camp" means an alternative incarceration  
7 program as provided in RCW 9.94A.690 designed to reduce recidivism and  
8 lower the cost of corrections by requiring offenders to complete a  
9 comprehensive array of real-world job and vocational experiences,  
10 character-building work ethics training, life management skills  
11 development, substance abuse rehabilitation, counseling, literacy  
12 training, and basic adult education.

13 ~~((+54+))~~ (53) "Work release" means a program of partial confinement  
14 available to offenders who are employed or engaged as a student in a  
15 regular course of study at school.

16 **Sec. 2.** RCW 9.94A.701 and 2008 c 231 s 7 are each amended to read  
17 as follows:

18 (1) If an offender is sentenced to the custody of the department  
19 for one of the following crimes, the court shall impose a term of  
20 community custody (~~for the community custody range~~) established under  
21 RCW (~~9.94A.850 or up to the period of earned release awarded pursuant~~  
22 ~~to RCW 9.94A.728 (1) and (2), whichever is longer)~~) 9.94A.715:

23 (a) A sex offense not sentenced under RCW (~~9.94A.712~~) 9.94A.507;

24 (b) A violent offense;

25 (c) A crime against persons under RCW 9.94A.411(2);

26 (d) A felony offender under chapter 69.50 or 69.52 RCW.

27 (2) If an offender is sentenced to a term of confinement of one  
28 year or less for a violation of RCW 9A.44.130(11)(a), the court shall  
29 impose a term of community custody (~~for the community custody range~~)  
30 established under RCW (~~9.94A.850 or up to the period of earned release~~  
31 ~~awarded pursuant to RCW 9.94A.728 (1) and (2), whichever is longer)~~)  
32 9.94A.715.

33 (3) If an offender is sentenced under the drug offender sentencing  
34 alternative, the court shall impose community custody as provided in  
35 RCW 9.94A.660.

36 (4) If an offender is sentenced under the special sexual offender

1 sentencing alternative, the court shall impose community custody as  
2 provided in RCW 9.94A.670.

3 (5) If an offender is sentenced to a work ethic camp, the court  
4 shall impose community custody as provided in RCW 9.94A.690.

5 (6) If a sex offender is sentenced as a nonpersistent offender  
6 pursuant to RCW (~~9.94A.712~~) 9.94A.507, the court shall impose  
7 community custody as provided in that section.

8 **Sec. 3.** RCW 9.94A.715 and 2008 c 276 s 305 are each reenacted and  
9 amended to read as follows:

10 (1) When a court sentences a person to the custody of the  
11 department for a sex offense not sentenced under RCW (~~9.94A.712,~~)  
12 9.94A.507, for a serious violent offense, or when a court sentences a  
13 person to a term of confinement of one year or less for a violation of  
14 RCW 9A.44.130(11)(a) committed on or after June 7, 2006, the court  
15 shall, in addition to the other terms of the sentence, sentence the  
16 offender to community custody for three years. When a court sentences  
17 a person to the custody of the department for a violent offense that is  
18 not considered a serious violent offense, any crime against persons  
19 under RCW 9.94A.411(2), an offense involving the unlawful possession of  
20 a firearm under RCW 9.41.040, where the offender is a criminal street  
21 gang member or associate, or a felony offense under chapter 69.50 or  
22 69.52 RCW, committed on or after July 1, 2000, (~~or when a court~~  
23 sentences a person to a term of confinement of one year or less for a  
24 violation of RCW 9A.44.130(11)(a) committed on or after June 7, 2006,))  
25 the court shall in addition to the other terms of the sentence,  
26 sentence the offender to community custody for (~~the community custody~~  
27 ~~range established under RCW 9.94A.850 or up to the period of earned~~  
28 ~~release awarded pursuant to RCW 9.94A.728 (1) and (2), whichever is~~  
29 ~~longer)) one year. The community custody shall begin: (a) Upon  
30 completion of the term of confinement; or (b) (~~at such time as the~~  
31 ~~offender is transferred to community custody in lieu of earned release~~  
32 ~~in accordance with RCW 9.94A.728 (1) and (2); or (c)) with regard to  
33 offenders sentenced under RCW 9.94A.660, upon failure to complete or  
34 administrative termination from the special drug offender sentencing  
35 alternative program. Except as provided in RCW 9.94A.501, the  
36 department shall supervise any sentence of community custody imposed  
37 under this section.~~~~

1 (2)(a) Unless a condition is waived by the court, the conditions of  
2 community custody shall include those provided for in RCW 9.94A.700(4).  
3 The conditions may also include those provided for in RCW 9.94A.700(5).  
4 The court may also order the offender to participate in rehabilitative  
5 programs or otherwise perform affirmative conduct reasonably related to  
6 the circumstances of the offense, the offender's risk of reoffending,  
7 or the safety of the community, and the department shall enforce such  
8 conditions pursuant to subsection (~~(+6+)~~) (5) of this section.

9 (b) As part of any sentence that includes a term of community  
10 custody imposed under this subsection, the court shall also require the  
11 offender to comply with any conditions imposed by the department under  
12 RCW 9.94A.720. The department shall assess the offender's risk of  
13 reoffense and may establish and modify additional conditions of the  
14 offender's community custody based upon the risk to community safety.  
15 In addition, the department may require the offender to participate in  
16 rehabilitative programs, or otherwise perform affirmative conduct, and  
17 to obey all laws. The department may impose electronic monitoring as  
18 a condition of community custody for an offender sentenced to a term of  
19 community custody under this section pursuant to a conviction for a sex  
20 offense. Within the resources made available by the department for  
21 this purpose, the department shall carry out any electronic monitoring  
22 imposed under this section using the most appropriate technology given  
23 the individual circumstances of the offender. As used in this section,  
24 "electronic monitoring" means the monitoring of an offender using an  
25 electronic offender tracking system including, but not limited to, a  
26 system using radio frequency or active or passive global positioning  
27 system technology.

28 (c) The department may not impose conditions that are contrary to  
29 those ordered by the court and may not contravene or decrease court  
30 imposed conditions. The department shall notify the offender in  
31 writing of any such conditions or modifications. In setting,  
32 modifying, and enforcing conditions of community custody, the  
33 department shall be deemed to be performing a quasi-judicial function.

34 (3) If an offender violates conditions imposed by the court or the  
35 department pursuant to this section during community custody, the  
36 department may transfer the offender to a more restrictive confinement  
37 status and impose other available sanctions as provided in RCW  
38 9.94A.737 and 9.94A.740.



1           (4) (~~Except for terms of community custody under RCW 9.94A.670,~~  
2 ~~the department shall discharge the offender from community custody on~~  
3 ~~a date determined by the department, which the department may modify,~~  
4 ~~based on risk and performance of the offender, within the range or at~~  
5 ~~the end of the period of earned release, whichever is later.~~

6           (5)) At any time prior to the completion or termination of a sex  
7 offender's term of community custody, if the court finds that public  
8 safety would be enhanced, the court may impose and enforce an order  
9 extending any or all of the conditions imposed pursuant to this section  
10 for a period up to the maximum allowable sentence for the crime as it  
11 is classified in chapter 9A.20 RCW, regardless of the expiration of the  
12 offender's term of community custody. If a violation of a condition  
13 extended under this subsection occurs after the expiration of the  
14 offender's term of community custody, it shall be deemed a violation of  
15 the sentence for the purposes of RCW 9.94A.631 and may be punishable as  
16 contempt of court as provided for in RCW 7.21.040. If the court  
17 extends a condition beyond the expiration of the term of community  
18 custody, the department is not responsible for supervision of the  
19 offender's compliance with the condition.

20           ((6)) (5) Within the funds available for community custody, the  
21 department shall determine conditions (~~and duration of community~~  
22 ~~eustody~~) on the basis of risk to community safety, and shall supervise  
23 offenders during community custody on the basis of risk to community  
24 safety and conditions imposed by the court. The secretary shall adopt  
25 rules to implement the provisions of this subsection.

26           ((7)) (6) By the close of the next business day after receiving  
27 notice of a condition imposed or modified by the department, an  
28 offender may request an administrative review under rules adopted by  
29 the department. The condition shall remain in effect unless the  
30 reviewing officer finds that it is not reasonably related to any of the  
31 following: (a) The crime of conviction; (b) the offender's risk of  
32 reoffending; or (c) the safety of the community.

33           **Sec. 4.** RCW 9.94A.707 and 2008 c 231 s 12 are each amended to read  
34 as follows:

35           (1) Community custody shall begin: (a) Upon completion of the term  
36 of confinement; (b) at such time as the offender is transferred to

1 community custody in lieu of earned release in accordance with RCW  
2 9.94A.728 (1) or (2); or (c) at the time of sentencing if no term of  
3 confinement is ordered.

4 (2) When an offender is sentenced to community custody, the  
5 offender is subject to the conditions of community custody as of the  
6 date of sentencing, unless otherwise ordered by the court.

7 ~~((3) When an offender is sentenced to a community custody range  
8 pursuant to RCW 9.94A.701 (1) or (2), the department shall discharge  
9 the offender from community custody on a date determined by the  
10 department, which the department may modify, based on risk and  
11 performance of the offender, within the range or at the end of the  
12 period of earned release, whichever is later.))~~

13 **Sec. 5.** RCW 9.94A.850 and 2005 c 282 s 19 are each amended to read  
14 as follows:

15 (1) A sentencing guidelines commission is established as an agency  
16 of state government.

17 (2) The legislature finds that the commission, having accomplished  
18 its original statutory directive to implement this chapter, and having  
19 expertise in sentencing practice and policies, shall:

20 (a) Evaluate state sentencing policy, to include whether the  
21 sentencing ranges and standards are consistent with and further:

22 (i) The purposes of this chapter as defined in RCW 9.94A.010; and

23 (ii) The intent of the legislature to emphasize confinement for the  
24 violent offender and alternatives to confinement for the nonviolent  
25 offender.

26 The commission shall provide the governor and the legislature with  
27 its evaluation and recommendations under this subsection not later than  
28 December 1, 1996, and every two years thereafter;

29 (b) Recommend to the legislature revisions or modifications to the  
30 standard sentence ranges, state sentencing policy, prosecuting  
31 standards, and other standards. If implementation of the revisions or  
32 modifications would result in exceeding the capacity of correctional  
33 facilities, then the commission shall accompany its recommendation with  
34 an additional list of standard sentence ranges which are consistent  
35 with correction capacity;

36 (c) Study the existing criminal code and from time to time make  
37 recommendations to the legislature for modification;

1 (d)(i) Serve as a clearinghouse and information center for the  
2 collection, preparation, analysis, and dissemination of information on  
3 state and local adult and juvenile sentencing practices; (ii) develop  
4 and maintain a computerized adult and juvenile sentencing information  
5 system by individual superior court judge consisting of offender,  
6 offense, history, and sentence information entered from judgment and  
7 sentence forms for all adult felons; and (iii) conduct ongoing research  
8 regarding adult and juvenile sentencing guidelines, use of total  
9 confinement and alternatives to total confinement, plea bargaining, and  
10 other matters relating to the improvement of the adult criminal justice  
11 system and the juvenile justice system;

12 (e) Assume the powers and duties of the juvenile disposition  
13 standards commission after June 30, 1996;

14 (f) Evaluate the effectiveness of existing disposition standards  
15 and related statutes in implementing policies set forth in RCW  
16 13.40.010 generally, specifically review the guidelines relating to the  
17 confinement of minor and first-time offenders as well as the use of  
18 diversion, and review the application of current and proposed juvenile  
19 sentencing standards and guidelines for potential adverse impacts on  
20 the sentencing outcomes of racial and ethnic minority youth;

21 (g) Solicit the comments and suggestions of the juvenile justice  
22 community concerning disposition standards, and make recommendations to  
23 the legislature regarding revisions or modifications of the standards.  
24 The evaluations shall be submitted to the legislature on December 1 of  
25 each odd-numbered year. The department of social and health services  
26 shall provide the commission with available data concerning the  
27 implementation of the disposition standards and related statutes and  
28 their effect on the performance of the department's responsibilities  
29 relating to juvenile offenders, and with recommendations for  
30 modification of the disposition standards. The administrative office  
31 of the courts shall provide the commission with available data on  
32 diversion, including the use of youth court programs, and dispositions  
33 of juvenile offenders under chapter 13.40 RCW; and

34 (h) Not later than December 1, 1997, and at least every two years  
35 thereafter, based on available information, report to the governor and  
36 the legislature on:

37 (i) Racial disproportionality in juvenile and adult sentencing,

1 and, if available, the impact that diversions, such as youth courts,  
2 have on racial disproportionality in juvenile prosecution,  
3 adjudication, and sentencing;

4 (ii) The capacity of state and local juvenile and adult facilities  
5 and resources; and

6 (iii) Recidivism information on adult and juvenile offenders.

7 (3) Each of the commission's recommended standard sentence ranges  
8 shall include one or more of the following: Total confinement, partial  
9 confinement, community supervision, community restitution, and a fine.

10 (4) The standard sentence ranges of total and partial confinement  
11 under this chapter, except as provided in RCW 9.94A.517, are subject to  
12 the following limitations:

13 (a) If the maximum term in the range is one year or less, the  
14 minimum term in the range shall be no less than one-third of the  
15 maximum term in the range, except that if the maximum term in the range  
16 is ninety days or less, the minimum term may be less than one-third of  
17 the maximum;

18 (b) If the maximum term in the range is greater than one year, the  
19 minimum term in the range shall be no less than seventy-five percent of  
20 the maximum term in the range, except that for murder in the second  
21 degree in seriousness level XIV under RCW 9.94A.510, the minimum term  
22 in the range shall be no less than fifty percent of the maximum term in  
23 the range; and

24 (c) The maximum term of confinement in a range may not exceed the  
25 statutory maximum for the crime as provided in RCW 9A.20.021.

26 ~~(5)((a) Not later than December 31, 1999, the commission shall~~  
27 ~~propose to the legislature the initial community custody ranges to be~~  
28 ~~included in sentences under RCW 9.94A.715 for crimes committed on or~~  
29 ~~after July 1, 2000. Not later than December 31 of each year, the~~  
30 ~~commission may propose modifications to the ranges. The ranges shall~~  
31 ~~be based on the principles in RCW 9.94A.010, and shall take into~~  
32 ~~account the funds available to the department for community custody.~~  
33 ~~The minimum term in each range shall not be less than one-half of the~~  
34 ~~maximum term.~~

35 ~~(b) The legislature may, by enactment of a legislative bill, adopt~~  
36 ~~or modify the community custody ranges proposed by the commission. If~~  
37 ~~the legislature fails to adopt or modify the initial ranges in its next~~

1 ~~regular session after they are proposed, the proposed ranges shall take~~  
2 ~~effect without legislative approval for crimes committed on or after~~  
3 ~~July 1, 2000.~~

4 ~~(c) When the commission proposes modifications to ranges pursuant~~  
5 ~~to this subsection, the legislature may, by enactment of a bill, adopt~~  
6 ~~or modify the ranges proposed by the commission for crimes committed on~~  
7 ~~or after July 1 of the year after they were proposed. Unless the~~  
8 ~~legislature adopts or modifies the commission's proposal in its next~~  
9 ~~regular session, the proposed ranges shall not take effect.~~

10 ~~(6))~~ The commission shall exercise its duties under this section  
11 in conformity with chapter 34.05 RCW.

12 NEW SECTION. **Sec. 6.** This act takes effect August 1, 2009.

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